

(4) *Return of prunes to producers and dehydrators.* Any lot of prunes delivered to a handler by a producer or dehydrator may be returned to the producer or dehydrator prior to an inspection thereof. Any lot of prunes so delivered whose identity has been maintained may be so returned following an inspection thereof, except prunes which have been size graded or sorted by the handler, resulting in a segregation of defects. Prunes which have been sorted for the producer or dehydrator, the identity of which have been maintained to the satisfaction of the inspector and the Committee, may be resubmitted for inspection in not more than three new lots, equal in weight to the original lot, and the applicable inspections shall supersede the original inspection.

[26 FR 8278, Sept. 2, 1961, as amended at 33 FR 11812, Aug. 21, 1968; 33 FR 12033, Aug. 24, 1968; 33 FR 14172, Sept. 19, 1968; 35 FR 11380, July 16, 1970; 37 FR 15980, Aug. 9, 1972; 39 FR 30343, Aug. 22, 1974; 43 FR 40199, Sept. 11, 1978; 48 FR 57261, Dec. 29, 1983]

§ 993.150 Disposition of prunes by handlers.

(a) *Inspection stations.* An inspection station shall be any plant of a handler, and any other place where he handles prunes.

(b) *Outgoing inspection.* Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of natural condition prunes or of processed prunes unless he has, prior to such shipment or final disposition, had them inspected and obtained a certificate showing that such prunes meet the effective minimum standards. Such inspection shall be made during that portion of the final preparation of the prunes for shipment or other final disposition as will permit proper sampling, whether in-line or floor inspection, and no handler shall perform such final preparation unless an inspector is present. The handler shall furnish promptly to the inspector a copy of the shipping or disposition order or other documents, which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. For the prunes inspected each day which meet the applicable minimum grade and size require-

ments for standard prunes, or standard processed prunes, the handler shall cause the inspector to issue in triplicate a signed certificate containing the following information: (1) The date and place of inspection; (2) the name and address of the handler and of the inspection service; (3) the number and size of packages or the net weight of prunes; (4) the number of the worksheet or worksheets on which the inspector's computations and results of tests are recorded; and (5) a statement that the prunes meet the effective minimum standards for standard prunes, or standard processed prunes, as the case may be.

(c) *Interhandler transfers.* With the exception of those prunes held by a handler pending their disposition pursuant to § 993.49(c) and those prunes held by him for the account of the Committee pursuant to § 993.57, a handler may transfer prunes to another handler within the area. Any such interhandler transfer may be without the transferring handler having an inspection made as provided for in § 993.51: *Provided*, That before each such transfer the transferring handler shall: (1) Give written notice of the transfer to the inspection service including the proposed date of the transfer, the names of the handlers and, by plant designation, the present location and the destination of the prunes, the number of containers, variety, size designation, and total net weight of the prunes, and the manifest or billing number; and (2) receive from the inspection service a DFA Form P-5 "Shipping Inspection Report and Certificate" marked "Interhandler Transfer Report" on which the inspection service recorded the information furnished by the transferring handler. The transferring handler shall sign the "Interhandler Transfer Report" including all copies thereof that were received from the inspection service, and forward the signed original and one copy to the receiving handler at the time of the interhandler transfer. Upon receipt of the transferred prunes, the receiving handler shall enter on both the original and the copy the date he received the prunes, sign the original, and immediately forward it to the inspection service. The transferring handler shall cause the inspection service

to promptly report the transfer to the Committee. As provided in § 993.50(f), the receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of §§ 993.50 and 993.51.

(d) *Tolerances for non-French prunes.* Any lot of standard prunes or standard processed prunes containing more than 2 percent by weight of non-French prunes shall be disposed of only in prune product outlets as prescribed in § 993.50(c) unless the non-French prunes therein have an average count of 40 or less per pound and unless in a 100-ounce sample of the lot, the count per pound of 10 ounces of the smallest prunes in the sample does not vary from the count per pound of 10 ounces of the largest prunes in the sample by more than 35 points. A lot shall be deemed to exceed the 2 percent tolerance for non-French prunes whenever an inspection shows such prunes exceed 2 percent in any four consecutive sampling units of two tons or less or, if less than four such units are sampled, in such lesser number of units.

(e) *Prunes which fail to meet minimum standards—(1) Committee's approval of disposition—(i) General.* Those defective prunes accumulated by a handler by removing them from standard or substandard prunes, and those prunes received or held by a handler which fail to meet the applicable minimum standards and are held for disposition without removal of defective prunes in excess of maximum tolerances, may only be used, if within the tolerances prescribed in § 993.97 II. C. (1), (2), and (3), for prune products, or if any such tolerances are exceeded and any live infestation corrected by fumigation, for non-human consumption or be destroyed. In order to insure that all such prunes are shipped or otherwise disposed of in accordance with § 993.50(e), no handler shall during any crop year ship or otherwise make final disposition of any such prunes, other than prune waste subject to daily non-human disposition for sanitation purposes, unless prior thereto he had obtained during that crop year (except as otherwise provided in paragraph (e)(1)(iii) of this section) the Committee's approval of his application to do so.

(ii) *Application for approval.* The handler's application to ship or otherwise make final disposition of any such prunes shall be submitted on Form PMC 2.2 "Application for Permission to Dispose of Substandard Prunes". If the prunes are for shipment, the application shall set forth: (a) The name and address of the handler's vendee and the name and address of the consignee whether the same as or different from the vendee; (b) the particular use to be made of the prunes; (c) if such use is to be by a person other than the handler's vendee or the consignee, the name and address of such user; and (d) the crop year or the period within, or the portion of, the crop year during which shipments are to be made. When the use or the name and address of the consignee or user are not known by the handler, the handler shall arrange for the submission of such information to the Committee. If use is to be by the handler, the application shall so indicate and shall set forth all applicable information. Each application for shipment shall be limited to the handler's vendee and the consignee if different from the vendee, and to a specific user and use, and may be open as to quantity: *Provided, That*, when the use or name and address of the user are not known by the handler, the application shall include the quantity of prunes to be shipped and be limited to that quantity. Each application for final disposition for a particular use by the handler shall be limited to such handler and use.

(iii) *Approval of applications.* The Committee's approval of a handler's application shall be transmitted to the handler on Form PMC 2.3 "Permission to Dispose of Substandard Prunes". In approving an application, the Committee shall specify the crop year, or the period within or the portion of the crop year, for which the approval is granted: *Provided, That*, the Committee may approve in July any such application that is submitted during that month by the handler for shipment or other final disposition of the prunes covered thereby in the succeeding crop year. When the use or the name and address of the user or consignee are not known to the handler, the Committee shall not approve

the application until it has been informed as to such use and user and consignee of the prunes.

(iv) *Disapproval of applications; or revocation of approved applications.* In acting on an application, the Committee may disapprove the application when: (a) The application does not conform with the requirements of paragraph (e)(1)(ii) of this section; (b) the Committee has cause to believe that the prunes covered by the application will not be shipped or disposed of in accordance with the application; or (c) the handler, or any of the parties involved in the proposed shipment or disposition, had shipped or made other disposition of prunes covered by a previously approved application inconsistent with that application. The Committee may for cause revoke a handler's previously approved application if he ships or makes other disposition inconsistent with such application. Whenever a user uses prunes inconsistent with an approved application, the Committee may for cause revoke such application, and such other approved applications applicable to such user as the Committee deems necessary to assure that the prunes covered by such applications will not be used in a manner inconsistent with those applications or the order. The Committee shall notify the handler in writing of each disapproval and each revocation.

(v) *Evidence of non-human disposition.* Whenever defective or substandard prunes or prune waste are shipped to or otherwise disposed of in non-human consumption outlets, or destroyed, the handler shall furnish the Committee with a copy of the shipping document or other documentary evidence of the disposition as may be satisfactory to the Committee and at such times as the Committee may direct.

(vi) *Books and records.* Each handler who ships or otherwise disposes of defective or substandard prunes or prune waste shall make available for examination by the Committee, at his business office at any reasonable time during business hours, copies of all applicable purchase orders, sales contracts, or disposition documents, together with any further information which the Committee may deem necessary or desirable to enable it to determine

whether such prunes or prune waste have been or will likely be utilized as authorized.

(2) *Out of the area shipments.* Whenever substandard prunes for human consumption are packed in closed containers, and if for shipment outside the area they shall be so packed, each such container shall be clearly marked "For Manufacturing Purposes Only". Whenever substandard prunes restricted to non-human usage are shipped in closed containers, each such container shall be clearly marked "For Non-Human Usage". In each instance, the letters shall be of reasonable prominence and in a conspicuous place on the container.

(3) *Inspection of substandard prunes.* Each handler shall cause substandard prunes, for use in prune products, to be inspected (prior to disposition or shipment by a handler) by an inspector, and that such inspector issue, in triplicate, a signed clearance certificate (for the preparation of which the handler shall make available to the inspector the necessary data) containing the following information: (i) The date and place of inspection and clearance; (ii) the name and address of the inspection service and of the handler; (iii) the number and kind of packages, the net weight, and the adequacy of the marking; (iv) the lot number or shipping or disposition order number; (v) the committee's approval number; (vi) the destination; and (vii) the actual percentage of off-grade prunes of each group, or combination of groups, of defects in excess of the then current tolerances for standard prunes or standard processed prunes.

(f) *Pitted prunes*—(1) *For human consumption as such.* (i) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless the lot, before pitting, met (A) the applicable minimum standard set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes, and (B) the requirements specified in § 993.50 (c) and (d).

(ii) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless these

prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(ii), pitted prunes means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(iii) No handler shall ship or otherwise make final disposition of any lot of macerated prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(iii), macerated prunes means prunes with the pit removed that are characterized by a flattened appearance with slightly more skin breaks where the pit has been removed than with pitted prunes.

(2) *For use in prune products.* Any lot of substandard prunes, whether natural condition or processed, if within the applicable tolerances prescribed in § 993.97 II C (1), (2), and (3), may be pitted and shipped or disposed of for use and used in prune products for human consumption: *Provided*, That prior to shipment or other final disposition by handler, such prunes have lost their form and character as prunes to the satisfaction of the inspector and the committee. An inspection certificate on such lot shall not be issued until the inspector has determined that the prunes therein have lost their form and character as prunes. Disposition of pitted prunes by handlers for use in prune products shall be in accordance with the applicable provisions of paragraph (e) of this section.

(g) *Disposition of undersized prunes—*
(1) *Application for and approval of disposition.* Undersized prunes accumulated by a handler pursuant to section 993.49(c) shall be disposed of in non-human consumption outlets during the crop year in which the prunes establishing such obligations were received from producers or dehydrators, or such later date that a handler may request

in a notice, filed with the Committee at least 30 days prior to July 31 of the year of accumulation: *Provided*, That, such handler has made a bona fide effort to dispose of its undersized prunes as demonstrated by the shipment of at least 65 percent of its undersized obligation by May 31; such handler has a sufficient quantity of undersized prunes held in storage to meet its remaining obligation; and the extension of time requested is not later than 60 days beyond the end of the crop year. Prior to making any such disposition, the handler shall obtain the Committee's approval of his application to do so. The handler's application to ship or otherwise make final disposition of any such undersized prunes shall be submitted on Form PMC 2.21 "Application for Permission to Dispose of Undersized Prunes" which shall set forth: (i) The name and address of the handler's vendee and the name and address of the consignee whether the same as or different from the vendee; (ii) the particular use to be made of the prunes; (iii) if such use is to be by a person other than the handler's vendee or the consignee, the name and address of such user; and (iv) the crop year or the period within, or portion of, the crop year during which shipment or other disposition is to be made. When the use or the name and address of the consignee or user are not known by the handler, the handler shall arrange for the submission of such information to the Committee. If use is to be by the handler, the application shall so indicate and shall set forth all applicable information. Each application for shipment shall be limited to the handler's vendee and the consignee, if different from the vendee, and to a specific user and use. Each application for final disposition for a particular use by the handler shall be limited to such handler and use. The Committee's approval of a handler's application shall be transmitted to the handler on Form PMC 2.31 "Permission to Dispose of Undersized Prunes." In approving an application, the Committee shall specify the crop year or the period within, or the portion of, the crop year for which the approval is granted. When the use or name and address of the user or consignee are not known to

the handler, the Committee shall not approve the application until it has been informed as to such use and user and consignee of the prunes. The requirements of § 993.150(e)(1)(iv) (except item (a) thereof), (v), and (vi) with regard to disapproval of applications or revocation of approved applications, evidence of nonhuman disposition, and the maintenance of books and records, applicable to prunes which fail to meet minimum standards, shall also apply to undersized prunes.

(2) *Documentation of disposition of undersized prunes*—(i) *Inspection and certification*. The handler shall cause an inspection to be made of each lot of undersized prunes prior to shipment or other disposition to determine whether such prunes meet the applicable requirements prescribed with respect to undersized prunes. After such determination, the handler shall cause a signed inspection certificate applicable to such prunes to be forwarded promptly to the Committee.

(ii) *Documentation of shipment or other disposition*. For each quantity of undersized prunes so shipped or otherwise disposed of, the handler shall promptly forward to the Committee one copy of the applicable bill of lading, truck receipt, or related documentation of disposition which shall show: (a) The name of the consignee; (b) the Committee approval number; (c) the destination by name and address of the person designated to receive the prunes; (d) the date of shipment or other disposition; (e) the inspection certificate number; (f) the net weight of the prunes; (g) the weight certificate number; and (h) identification of the prunes as undersized prunes.

(iii) *Certification or receipt*. The handler shall forward with each quantity of undersized prunes disposed of a certification form in triplicate, Form PMC 4.71 "User's Receipt of Dried Prunes for Nonhuman Usage" on which the handler shall have entered the following applicable information: (a) The inspection certificate number; (b) the Committee approval number; (c) the shipping or other disposition document number; (d) the name of the carrier; (e) the date of shipment or other disposition; and (f) the license or car number of each carrier unit, if applicable, used

in the movement of the prunes to the destination of disposition or usage. The handler shall cause, either directly or through the vendee or consignee, the user of the prunes to certify on Form PMC 4.71 the receipt by him of the applicable prunes and to promptly forward the original thereof to the Committee. Such certification shall set forth the location where the prunes were received, the date of such receipt, the name and address of the person who will use or otherwise dispose of the prunes, and the signature and authority of the certificate to act for the user.

(iv) *Certification of usage*. The handler shall cause, either directly or through the vendee or consignee, the user of the prunes to certify, and forward to the Committee, one copy of Form PMC 4.71, following use or disposition thereof, that the prunes have been used or otherwise disposed of, the date and location at which use or other disposition took place, the name and address of the user, the signature and authority of the certificant to act for the user, and the date of his certification.

(3) *Tolerances permitting a deviation in prune sizes from applicable undersized openings*—(i) *Undersized French prunes*. Whenever an undersized regulation specifies an opening of $\frac{23}{32}$ of an inch for French prunes, any quantity of French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 15 percent by weight of prunes which do not pass freely through a round opening $\frac{24}{32}$ of an inch in diameter. Whenever an undersized regulation specifies an opening of $\frac{24}{32}$ of an inch in diameter for French prunes, any quantity of French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 12 percent by weight of prunes which do not pass freely through a round opening $\frac{26}{32}$ of an inch in diameter.

(ii) *Undersized non-French prunes*. Whenever an undersized regulation specifies an opening of $\frac{26}{32}$ of an inch for non-French prunes, any quantity of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 10 percent by weight of prunes which do not pass freely through a round opening $\frac{30}{32}$ of

an inch in diameter. Whenever an undersized regulation specifies an opening of $\frac{30}{32}$ of an inch in diameter for non-French prunes, any quantity of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 12 percent by weight of prunes which do not pass freely through a round opening $\frac{32}{32}$ of an inch in diameter.

[26 FR 8280, Sept. 2, 1961, as amended at 27 FR 458, Jan. 17, 1962; 29 FR 2331, Feb. 11, 1964; 33 FR 14172, Sept. 19, 1968; 35 FR 5108, Mar. 24, 1970; 35 FR 11381, July 16, 1970; 37 FR 15980, Aug. 9, 1972; 40 FR 52838, Nov. 13, 1975; 48 FR 57261, Dec. 29, 1983; 57 FR 56243, Nov. 27, 1992; 58 FR 13698, Mar. 15, 1993; 59 FR 10228, Mar. 3, 1994]

RESERVE CONTROL

§ 993.156 Application of reserve percentage.

The reserve obligation of each handler shall be determined by applying the reserve percentage to the weight of prunes in each lot, after deducting the weight of prunes in such lot shown as a percentage on the applicable inspection certificate as necessary to be removed therefrom pursuant to § 993.49(c), in such manner as may be prescribed in such reserve control regulation established for the crop year in which such lot is received by a handler from a producer or dehydrator.

[30 FR 13311, Oct. 20, 1965]

§ 993.157 Holding and delivery of reserve prunes.

(a) *Sales and deliveries.* Committee sales and deliveries of reserve prunes from the holdings of any handler shall not exceed the quantity of reserve prunes required to be held by him. The reserve prune holding requirement of the handler shall be reduced by the tonnage so sold or delivered.

(b) *Assistance to handlers.* As assistance to handlers, the committee shall furnish each handler a monthly tabulation, beginning as soon as possible after the start of the crop year, showing his reserve obligation and holding requirement based on records on file with the committee.

(c) *Failure to hold and deliver reserve prunes in accordance with reserve obligation.* In the event a handler fails to

hold for the committee and deliver his total reserve prune obligation in any category and is unable to rectify such a deficiency with salable prunes, he shall compensate the committee in an amount computed by multiplying the pounds of natural condition prunes so deficient by the applicable values established by the committee: *Provided*, That the remedies prescribed herein shall be in addition to, and not exclusive of, any of the remedies or penalties prescribed in the act with respect to noncompliance. The determination of any such deficiency shall include application of any tolerance allowance for shrinkage in weight, increase in the number of prunes per pound, and normal and natural deterioration and spoilage which may then be in effect.

(d) *Excess delivery of prunes to the committee.* In the event a handler delivers to the committee as reserve prunes a quantity of prunes in excess of his holding requirement for reserve prunes, the committee shall make such practical adjustments as are consistent with this part and this may include compensating the handler for such excess (nonreserve prunes) by paying to him the proceeds received by the committee for such excess.

(e) *Holding reserve prunes on other than a handler's premises.* No handler shall hold reserve prunes on the premises of another handler, or in approved commercial storage other than on his own premises, unless prior thereto he notifies the committee in a certified report on Form PMC 5.1 "Notice of Proposed Intent to Store Reserve Prunes" which shall contain at least the following information: (1) The date and the name and address of the handler; (2) the name and address of the person on whose premises the reserve prunes will be stored for the handler; (3) the approximate quantity to be so stored and the exact location and description of the storage facilities; and (4) the proposed date that such storage will begin. The report shall be accompanied by a signed statement by the persons on whose premises the reserve prunes are to be stored agreeing to hold such prunes under conditions of proper storage and further agreeing to permit access to such premises by the